



PROCEDURES FOR FILING A VARIANCE

An individual has the right to file an appeal with the Nashua Zoning Board of Adjustment (ZBA) if a particular construction project fails to conform to the requirements of the Nashua Zoning Ordinance. This process is available if a proposal fails to comply with the dimensional, density or other specified requirements of the Zoning Ordinance due to unique circumstances affecting the subject property. The appeal procedure for seeking such relief is referred to as a "variance"

For many, appearing before the ZBA represents a new experience. The purpose of this handout is to provide information necessary for proceeding with this process. It is recommended that you carefully read the following instructions and contact the Office of Zoning (603) 589-3090 should you have any questions or desire additional information.

1. HOW TO COMPLETE THE ZBA APPLICATION

- a. Obtain a ZBA application form. Forms are available at the City of Nashua Planning Department, City Hall, 229 Main Street, Second Floor, Nashua, New Hampshire. It is also on the City's web site (www.nashuanh.gov). Complete the application, including all necessary signatures. Lessees and/or optionees must secure the owner's written authorization as provided on the application form.
- b. All applications must be accompanied with a plot plan denoting the location of property lines, all existing and proposed buildings and structures in relation to the property lines, paved or parking surfaces, and appropriate measurements. Plot plans must be drawn to scale and accurately reflect existing and proposed conditions. It is recommended that plot plans be drawn on an 8½" x 11" sheet of grid paper. Only licensed land surveyors or the Superior and Supreme Court of NH can determine boundary lines. Without the signature and seal of a licensed land surveyor, the public has no certainty that the boundary is current, correct, or that the plan depicts all appropriate dimensioned information. (See example of plot plan attached.)
- c. Applications must be submitted with appropriate application fees payable to the City of Nashua in order to defray costs associated with legal notification, advertising, and administrative expenses. The application fees vary depending on the type and number of requests being sought. Refer to #4 below for determining appropriate application fees.
- d. Submit a completed application, plot plan, and applicable application fee to the City of Nashua, Office of Zoning. Upon receipt of a complete application, your request will be scheduled for a public hearing. Refer to the attached schedule of hearing dates and corresponding deadline dates for submitted applications.
- e. The Office of Zoning will notify applicants by certified mail approximately ten (10) days prior to the hearing confirming the time and location of the meeting. As a general rule, hearings are held at 6:30 p.m. in the third floor auditorium in City Hall. It is important; however, to refer to your notification letter in the event of a change in time or location.

2. THE PUBLIC HEARING

- a. Attendance at the ZBA public hearing by either yourself or your representative is mandatory. When your case is called, approach the podium, give your name and address for the record, and proceed to explain the nature of your request. When considering a variance, the ZBA can weigh only the following conditions of law relative to a variance. Therefore, it is important that you explain how each condition applies to your case.

The zoning board of adjustment shall have the power to:

- b. Authorize, upon appeal in specific cases, a variance from the terms of the zoning ordinance if:
 - (1) The variance will not be contrary to the public interest;
 - (2) The spirit of the ordinance is observed;

- (3) Substantial justice is done;
- (4) The values of surrounding properties are not diminished; and
- (5) Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship.
 - (A) For purposes of this subparagraph, “unnecessary hardship” means that, owing to special conditions of the property that distinguish it from other properties in the area:
 - (i) No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property; and
 - (ii) The proposed use is a reasonable one.
 - (B) If the criteria in subparagraph (A) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.

The definition of “unnecessary hardship” set forth in subparagraph (5) shall apply whether the provision of the ordinance from which a variance is sought is a restriction on use, a dimensional or other limitation on a permitted use, or any other requirements of the ordinance.

3. ADDITIONAL PROCEDURES – REQUEST FOR REHEARING

- a. If you are aggrieved by a ZBA decision, you may file a Request for Rehearing within thirty calendar days following the decision. It is recommended that the Request for Rehearing be hand delivered to the Office of Zoning. A Request for Rehearing, presented in letterform and addressed to the ZBA, should outline the basis for the rehearing request. The ZBA is empowered to grant a rehearing if it is found a procedural error has occurred or if the Request for Rehearing contains new evidence not presented during the initial hearing.
- b. If a rehearing is granted, you must submit a new application along with associated fees to the ZBA to schedule a new hearing. A Request for Rehearing that is denied may be appealed to the New Hampshire Superior Court within thirty days from the date of decision.

4. FEES (See Article XLIII, 190-267 – A.(8) and C.(1) for more information)

- a. Basic fee for use variance \$900.00
- b. Basic fee for special exception petitions involving the following:
 - 1. Filling of floodplains \$440.00
 - 2. Filling of wetlands \$440.00
 - 3. Planned business developments \$440.00
 - 4. Processing/removal of raw material \$440.00
- c. Basic fee for all other petitions except as otherwise noted \$330.00
- d. Applications with more than one request \$200.00
- e. The abutter notification fee shall be any necessary postal fees plus \$3.00 per abutter.

Additional postal fees do not apply to existing residential structures on lots containing three residential units or less. The time and date of the hearing shall not be set, nor shall notices be sent out, unless and until all the supporting documents, including all permits, plans, approvals and other documents required for the application have been filed with the administrative officer. Additionally, any postponement caused by the applicant, unless the direct result of Zoning Board action, shall necessitate the payment of a processing fee of \$100.00.

- f. The applicant shall pay \$15.00 for each required on-site notification sign. A recovery fee of \$100.00 shall be paid by the applicant for each sign remaining on-site in excess of seven days of the public hearing.